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MONTANA LEGISLATIVE COUNCIL
STATE CAPITOL
HELENA, MONTANA 59601

BILL DRAFTING MANUAL

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I'm the Legislative Draftsman,
I compose the country's laws,
And of half the litigation
I'm undoubtedly the cause.
I employ the kind of English
Which is hard to understand,
Though the purists do not like it,
All the lawyers think it's grand.

I'm the Legislative Draftsman,
And they tell me it's a fact
That I often make a muddle
Of a simple little Act.
I'm a target for the critics,
And they take me in their stride--
Oh, how nice to be a critic
Of a job you've never tried!*

*Adopted from J.P.C., Poetic Justice 31 & 32 (1947)

PREFACE

The first Bill Drafting Manual was written as a staff project by the Legislative Council staff during the 1960 and 1961 interim periods to provide a uniform standard for bill drafting. Its main purpose was to provide the draftsman with a reference source to the requirements of Senate and House rules, statutes, constitution, and case law as well as suggestions on the mechanics, technique, and style of legislative drafting.

Since 1961, the Montana Legislature has changed its rules many times and is now operating under a new Constitution with a drastically overhauled legislative article. These changes as well as a new computerized bill-drafting system have rendered the 1961 manual obsolete in many respects.

This manual liberally incorporates the comments on grammar, punctuation, capitalization, and style from the old manual. However, the remainder of the manual has been updated and substantially changed.

As many contingencies have been covered as could reasonably be expected in a publication of this size; yet in almost any drafting job questions will arise which must be answered by the draftsman himself. This manual is no substitute for legal research, or for the experience, judgment, and aptitude of the attorney. However, the guidelines set out here will assist those who draft legislation for introduction in the Montana Legislature.

As this manual goes to press the 1975 Joint Rules have not been finalized. These could conceivably affect the drafting format set forth in this manual.

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Research and Drafting

Research, organizing, and writing are three steps inherent in all writing. Bill drafting is no exception.

Often a drafter will have the facts sufficiently well in mind so drafting can be done with little or no research. However, the precision and complexity of the law almost always requires research.

The extent of research required depends on the complexity of the drafting problem. Defining that problem is the first step. Determine the exact purpose of the bill and define the problem the proponent wishes to solve.

Analysis of the problem to be solved will enable the drafter to determine the sources he must consult for more information. Sources of information that must be considered by the drafter include the constitution, existing federal, state, or local statutes, case law, pending law, and applicable federal, state, or local regulations.

Research preparation must be as thorough as time allows. A thorough understanding of the legal and practical factors involved in a bill is necessary to ensure a bill that will accomplish the purpose of its proponent. The drafter has a professional obligation to advise the proponent of possible legal or practical problems of which he is aware.

No one can tell the drafter when enough research is done. The drafter must determine when to stop gathering information and start writing. Judgment must be exercised to balance the effort to gather enough data without wasting time in endless pursuit of

CHAPTER 1

B I L L D R A F T I N G

Policy and the Bill Drafter

Bills may be drafted for diverse persons and groups by various draftsmen. Some are drafted by the Legislative Council staff at the request of a legislator or committee, some are drafted by counsel to departments of state government, and some are drafted by counsel retained by individuals or groups as legislative proposals. Whatever the position of the draftsman, it is his function to translate the objectives and policies of the person or group for whom he is drafting into a clear, concise legislative draft. The drafter must not express his personal thoughts or promote his own interests but must remain an impartial technician. To do otherwise is to risk drafting legislation containing ideas or implications not intended by the person for whom the bill is drafted.

Research and Drafting

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unnecessary information.

Organization

Organize the information at hand. Develop an outline that places the elements of the problem in a logical pattern. A bill that requires only a simple amendment to existing law will present no organizational problem. A major new body of law requires considerable effort to guarantee clarity. Some bill parts are so common that their placement in a bill has been standardized. A drafter must be familiar with the standard bill format discussed in Chapter 4 of this manual before he begins to organize his bill.

Begin to draft the bill when the work is outlined. Rewrite the bill as many times as necessary to achieve clarity, coherence, and unity. Revise the organization of the bill when revision contributes to clarity.

Timesavers

There are several timesavers that may be used in preparing copy for the typist.

(a) Each section of a long bill may be placed on a separate sheet of paper until a cohesive draft is prepared. Sections can be then shuffled and rearranged with ease as research and construction proceed. Ideally, sections should not be numbered and internal references should not be filled in until the final arrangement is reached.

(b) Copies of the current statutes may be taped to draft pages and deletions and new language indicated in red pen on the copy.

(c) Instructions to typist concerning inserts, deletions, underscoring, etc., must be crystal clear.

(d) A list of the introductory clauses used when amending or repealing sections can be given the typist so that the drafter need not write the entire clause each time it is needed. For instance, the drafter may merely write "amend 89-101" and the typist will type the proper introductory amending clause "Section 1. Section 89-101, R.C.M. 1947, is amended to read as follows:"

Drafting Aids

The following serve as aids in drafting bills:

(a) Other Montana statutes. A bill may be patterned on existing law, even if the existing law is on a different subject. For example, when drafting a bill creating a board to license a particular occupation the various licensing laws should be examined for a suitable model.

(b) Bills introduced in past sessions may be helpful. The subject indexes of Senate and House journals may be used to determine whether a bill on a particular topic was introduced in that session and the bill's number. The Legislative Council library keeps at least one copy of bills introduced in the most recent legislative sessions. The Office of the Secretary of State has copies of all introduced bills for all past sessions.

(c) The current session subject index published by the Council should be checked to see if an identical or similar bill has been introduced.

(d) Comparison of laws of other states on the same subject is usually very beneficial. In following a law from another state the drafter must be very careful to make the language conform to Montana law.

(e) A list of uniform and model acts and Suggested State Legislation should be checked to see if a uniform act (which is intended to be followed exactly), a model act, or suggested act could be used as a guide.

(f) If time permits, the drafter should consult with experts in the field affected. If the bill affects a governmental or state agency, a conference with an appropriate staff member from the agency is very helpful. If the sponsor permits, a draft of the proposal should be sent to the agency for comment.

CHAPTER 2

S T Y L E A N D L A N G U A G E

Bills should be written in a simple, clear, and direct style, phrased for the common reader as well as for the political or legal expert.

A poorly drafted, ambiguous bill will create confusion, waste the time of citizens affected, confuse those charged with its administration, lead to litigation, and will likely fail to accomplish the purpose of the author. Good drafting requires concise wording that is understandable by a person who has no special knowledge of the subject.

If a paragraph in a bill has to be paraphrased to make it intelligible to the layman, it needs revising. In Montana, the common law tradition has manifested itself in the timeworn, nonessential phrases and rhetorical flourishes found in our legislative enactments. The suggestions contained in this chapter are designed to help a drafter avoid the most common faults in style and language evident in our present law.

GRAMMAR

Generally, the ordinary rules of grammar apply to legislative writing; however, in a few instances a departure from common usage is suggested.

(1) Tense

Use the present tense. The law speaks in the present and each law is designed to give a rule for the continuing present. The present tense is a simple and natural form of expression. "The present tense includes the future as well as the present." (Section 19-103, R.C.M. 1947)

EXAMPLE	A defendant in a criminal action is presumed to be innocent until the contrary is proved, and in case of a reasonable doubt whether his guilt is satisfactorily shown, he is entitled to an acquittal. (Present tense)
---------	--

EXAMPLE	A defendant in a criminal action shall be presumed to be innocent until the contrary shall be proved, and in case of a reasonable doubt whether his guilt shall be satisfactorily shown, he shall be entitled to an acquittal. (Future tense)
---------	---

(2) Voice

Use the active voice instead of the passive.

EXAMPLE The board shall appoint a director. (Active)

EXAMPLE A director shall be appointed by the board.
(Passive)

The active voice gives the agent, the doer, its logical position before the verb.

(3) Number

Use the singular instead of the plural when possible.

EXAMPLE A defendant in a criminal action is presumed
innocent until the contrary is proved.
(Singular)

EXAMPLE Defendants in a criminal action are presumed
innocent until the contrary is proved. (Plural)

"The singular number includes the plural." (Section 19-103, R.C.M. 1947)

(4) Articles and Demonstrative Adjectives

"A person who violates" is preferred to "any person who violates", "each person who violates", or "all persons who violate". Consistent use of the articles "a" or "an" results in smoother writing and more precise expression.

"Such" person or "said" board should also be avoided. "Said" is archaic and should never be used. Usually "such" can be avoided by referring to "the board", "an institution", "a person", "these laws", etc., or by employing the appropriate pronoun such as "he" or "it". However, occasionally "such" may be needed to identify the thing to which it refers, and should be used if necessary to avoid ambiguity.

(5) Gender

Avoid using "he or she" and "his or hers" when referring to a person affected by a statute. When consistent with the standards of precision and clarity, use sex neutral words such as person, individual, applicant, candidate, etc. "Words used in the masculine gender include the feminine and neuter." (Section 19-103, R.C.M. 1947)

(6) Mood

The drafter should avoid using the "false imperative". The word "shall" should not be used to state a legal result or fact.

EXAMPLE The term "commission" means the water
(preferred) commission.

EXAMPLE The term "commission" shall mean the water
(avoid) commission.

EXAMPLE A person who violates this act is guilty of a
(preferred) misdemeanor.

EXAMPLE A person who violates this act shall be guilty
(avoid) of a misdemeanor.

However, the word "shall" should be used in mandatory statutes prohibiting or requiring certain legal acts. Exceptions to this rule are discussed below.

(7) Shall and May

Whenever possible, use the word "shall" only in an imperative or mandatory sense and "may" in a permissive sense. Where a right, privilege, or power is conferred, "may" should be used.

Where the power conferred on a public official might be construed by the courts as a duty, the word "may" should be followed by words such as "in his discretion". The Montana Supreme Court in some instances has given a mandatory meaning to the word "may" (State ex rel. Griffin v. Greene, 104 Mont. 460); (Hansen v. City of Havre, 112 Mont. 207; Bascom v. Carpenter, 126 Mont. 129, 135, 136). "When a statute directs that a thing 'may' be done in one manner, it ordinarily implies that it may not be done in any other manner" (Fletcher v. Paige, 124 Mont. 114, 118).

Do not use the word "shall" to confer a right because that implies a duty to enjoy the right.

EXAMPLE He is entitled to an annual salary of \$21,000;
(preferred) or His annual salary is \$21,000.

EXAMPLE He shall receive an annual salary of \$21,000.
(avoid)

Do not use a negative subject with an affirmative "shall".

EXAMPLE No person may
(preferred)

EXAMPLE No person shall
(avoid)

As explained by Professor Reed Dickerson, "Literally, 'No person shall....' means that no one is required to act. So read, it negates the obligation, but not the permission, to act. On the other hand, 'No person may....' negates also the permission and is, therefore, the stronger prohibition."

CAPITALIZATION, PUNCTUATION, AND ABBREVIATION

Capitalization

Capitalization rules for bill drafting represent an exception to standard usage. In drafting bills capitalize as little as possible. Capitalization does not have any legal significance and the lower case is easier to read and easier to write.

Capitalization is clerically controlled, in accordance with the rules that follow, by the Legislative Council staff when bills are prepared for introduction.

EXAMPLE "43-206.1. The secretary of state shall prepare certified rosters from the official election records on file in his office for use in the organization of the senate and house of representatives."

Capitalization Rules for Bill Drafting

(1) Capitalize the first word in a sentence. The first words in tabulated items following a colon may also be capitalized, if the items express complete thoughts.

(2) Capitalize months and days of the week.

(3) Capitalize "Montana" in "state of Montana" but not "state". Capitalize "County" but not "city" in the name of a county or city, as "Cascade County" or "city of Butte".

(4) Capitalize names of specific persons or places, as "Bitter Root Mountains" or "Charles Marion Russell".

(5) Capitalize names of historic events, as "World War II", and holidays, as "Christmas Day".

(6) Capitalize reference to a statute compilation, as "R.C.M. 1947" or "Revised Codes of Montana, 1947", but not "the statutes" or "the codes" or "constitution". Do not capitalize the words "chapter" or "section" when referring to the code or the constitution, but capitalize the name of a particular title in the Revised Codes, as "Title 91, R.C.M. 1947", and the name of an article in the constitution, as "Article V, The Legislature".

(7) Capitalize names of races, citizens, and languages, as "the tribal councils of the respective Indian tribes".

(8) Capitalize words pertaining to Deity, as "Almighty God".

(9) Capitalize the name of a particular act, as "Utility Siting Act of Montana".

(10) Do not capitalize official titles of state, county, or

municipal officers, agencies, or institutions, such as "the governor", "the department of state highways", "Montana state university", or "board of county commissioners". The same style is used for officers at the federal level, as "U.S. department of agriculture", or "the president".

(11) Do not capitalize words that indicate geographic location, as "northern Montana".

Punctuation

Punctuation is generally not considered part of a statute and therefore is subordinate to the text. But courts do look to punctuation to ascertain meaning if the language is unclear. So, as well as striving for clear expression through the proper use of words, the draftsman should also employ correct punctuation in order to support the words and avoid ambiguity.

(1) Comma

If a sentence consists of two independent clauses, each with subject and predicate, use a comma before the conjunction.

EXAMPLE The commission shall report annually to the governor, and it shall cause the report to be printed for public distribution.

If the second part of a sentence has no subject, a comma is unnecessary unless required for clarity.

EXAMPLE The commission shall report annually to the governor and shall cause the report to be printed for public distribution.

Enclose a parenthetical phrase or clause with two commas.

EXAMPLE The report, which must be approved by a majority of the commission members, shall be sent to the governor before July 1 of each year.

Words, phrases, or clauses in a series are separated by commas.

EXAMPLE The enumeration in this constitution of certain rights shall not be construed to deny, impair, or disparage others retained by the people.

The use of the comma before the conjunction connecting the last two members of a series is preferable.

EXAMPLE Wheat, corn, barley, and rye.

Note: When citing the Revised Codes of Montana in the abbreviated method no comma is used before the date.

EXAMPLE Section 84-2132, R.C.M. 1947,...

(2) Semicolon

Use the semicolon between two main clauses not joined by one of the simple coordinating conjunctions (and, but, or, nor, for).

EXAMPLE Letters and other private communications in writing belong to the person to whom they are addressed and delivered; they cannot be published against the will of a writer.

Also use the semicolon to separate two or more coordinate elements, one or both of which contain commas.

EXAMPLE Letters and other private communications in writing belong to the person to whom they are addressed and delivered; but they cannot be published against the will of a writer, except by authority of law.

The presence of the coordinating conjunction "but" in the second example would permit the use of a comma to separate the two main clauses, if there were no comma in the second clause. Use the semicolon to separate coordinate elements in a series introduced by a colon when those elements are dependent clauses.

(3) Colon

A colon is used most often in legislative drafting to introduce a series, usually in tabular form.

EXAMPLE Each policy shall specify:

- (1) the names of the parties to the contract;
- (2) the subject of the insurance; and
- (3) the risks insured against.

A colon may also be used to introduce a long quotation. (See first example under "Quotation Marks", below.)

(4) Parentheses

Use commas in preference to parentheses when possible. However, occasionally parentheses will serve to clarify the meaning of a sentence.

EXAMPLE Two or more counties may apply for funds for construction (and operation and maintenance when permitted) under this act.

(5) Quotation Marks

In American usage printers usually place a period or comma inside closing quotation marks whether it belongs logically to the quoted matter or to the whole sentence or context. In bill drafting, clarity is more important than usual so a period or a comma should be placed outside quotation marks when it does not belong to the quoted matter.

Do not overuse quotation marks. In legislative drafting quotation marks are usually used only to enclose titles or texts of acts or laws referred to or incorporated by reference, to enclose defined words or phrases, or to enclose amended code sections.

EXAMPLE (1) The state of Montana hereby accepts and assents to the terms and provisions of the act of congress, approved May 8, 1914, entitled: "An Act to Provide for Cooperative Agricultural Extension Work Between the Agricultural Colleges in the Several States".

EXAMPLE (2) "Game" means game animals and game birds, the killing of which is restricted by the laws of Montana.

EXAMPLE (3) Section 19-101, R.C.M. 1947, is amended to read as follows:

"19-101. Joint authority, construction of words giving. Words giving a joint authority to three or more public officers, or other persons, are construed as giving such authority to a majority of them unless it is otherwise expressed in the ~~act~~ code giving the authority."

The drafter need not amend or "clean up" present legislation merely to move such punctuation marks, but must follow the rule in drafting new legislation.

Abbreviation

Abbreviations are seldom used in legislative writing and should be avoided, except in two instances. Revised Codes of Montana, 1947, may be abbreviated to R.C.M. 1947; 1 p.m. is preferred to one o'clock P.M.

NUMBERS, DATES, TIME, AND AGE

Numbers

Numbers should be expressed in words, followed immediately by figures in parentheses.

EXAMPLE For each elementary school having ANB of nine (9) or fewer pupils, the maximum shall be seven thousand eight hundred six dollars and fifty cents (\$7,806.50).

Monetary sums and percentages should be expressed as follows:

ten cents (\$.10)
ten dollars (\$10) not (\$10.00)
one hundred fifteen dollars (\$115)
ten dollars and twenty-five cents (\$10.25)
twenty thousand dollars (\$20,000)
five million dollars (\$5,000,000)
five million, five hundred thousand dollars (\$5,500,000)
fifty percent (50%)

Dates

Dates should be expressed as follows:

December 31 (Not December 31st or 31st day of December)
July 12 (not July 12th)
December 31, 1974
December, 1974
October, November, and December, 1974

Dates used to indicate a period of time may be expressed as follows: "For the period beginning July 1, 1973, and ending June 30, 1975", or "after June 30, 1974", or "effective July 1, 1975".

"From July 1, 1975", "after July 1", or "between July 1 and" might be construed to mean a beginning date of July 2, and should be avoided.

Another acceptable expression for a period of time that begins July 1, 1973, and ends June 30, 1975, is "After June 30, 1973, and before July 1, 1975..." There can be no mistake, when this style is used, that July 1, 1973, is the first effective date and that June 30, 1975, is the expiration date.

It is better to refer to a day rather than to the time an event will occur, as "ninety (90) days after the day on which judgment is entered" not "ninety (90) days after the time..." Usually, a period is measured in whole days, not the time of day.

Time

Time should be expressed as follows:

12 noon
12 midnight
9 a.m. (not 9:00 a.m. or 9:00 o'clock a.m.)
1 p.m.
1:30 p.m.

Age

Age should be expressed as follows:

"A person who is eighteen (18) years of age or older" (not "over eighteen (18) years of age")

"A person who is under eighteen (18) years of age" or "who has not yet reached his eighteenth birthday."

"A person who is eighteen (18) years of age or older and under sixty-six (66) years of age" (not "between the ages of eighteen (18) and sixty-five (65)").

PROVISOS, CASE, CONDITION, AND EXCEPTION

Provisos

Provisos are clauses introduced by "provided, however", "provided, that", "provided, further", and "provided, always", and properly should be used only for introducing exceptions or qualifications to the preceding clause. In fact, they are often improperly used to introduce a new idea or a separate statement not necessarily connected with the preceding clause.

The word "provided" has been so overworked in legislative drafting that it has no definite meaning. "Little if any significance is to be given to the use of the word 'provided'." It must be defined by the court before it can be interpreted. "The word 'provided', when used in a legislative enactment, may create a condition, limitation, or exception to the act itself, or it may be used merely as a conjunction meaning 'and' or 'before', and as to what sense the word was used must be determined from the context of the act." (State v. Bruce, 104 Mont. 500, 516)

It is best to avoid provisos altogether. Introduce an exception or limitation with "except that", "but", or "however" -- or simply start a new sentence. If there are many conditions or exceptions, they should be placed in a separate subsection or in a tabulated list at the end of the sentence.

Case and Condition

The case or condition describes the circumstances which must exist before an act becomes operative. Case is sometimes distinguished from condition, but for practical purposes case and condition may be treated as synonymous.

EXAMPLE If any executor or administrator neglects or refuses to appear and render an exhibit, after having been duly cited, an attachment may issue against him.

EXAMPLE When the deeds or conveyances have been properly recorded, the record is evidence in all courts and has the same effect as the original.

If the circumstances under which the rule is to apply can be stated briefly and simply, they should precede the rule itself. However, if the circumstances in which the rule is to apply involve numerous contingencies or conditions, the general rule should be stated first and the conditions listed in tabular form.

EXAMPLE (1) No person may hold the office of _____ unless he:

- (a) is a qualified elector;
- (b) resides in the state;
- (c) is at least twenty-five (25) years of age;
- (d) holds no other elective office; and
- (e) holds no other appointive office for which he is paid compensation from state funds.

Do not state as a command what is merely a condition precedent.

EXAMPLE To be eligible for governor, a person must be a
(preferred) resident of Montana.

EXAMPLE The governor shall be a resident of Montana.
(avoid)

The Exception

The exception is used to exempt something from the application of the law and should be precisely stated in order to describe only those persons or things intended to be excepted. The direct statement should include all persons and things to be covered by the rule; if there is a simple exception to the rule, place the exception at the end of the rule.

EXAMPLE This act applies to all persons except:

- (1) persons sixty-five (65) years of age or older;
- (2) persons who have resided in the state for less than one (1) year; and
- (3) persons who...etc.

Or, the exception may be placed in a separate subsection and incorporated by reference into the subsection stating the rule.

EXAMPLE

(1) Except as provided in subsection (2) of this section, the board may ... etc.

(2) This act does not apply to ... etc.

CHAPTER 3

WORD CHOICE

The objective in legislative drafting is to make the final product as precise and understandable as possible. There are hundreds of expressions, legal and otherwise, that can be simplified. In general,

Never use a long word where a short one will do.

If it is possible to cut a word out and preserve the desired meaning, always cut it out.

Never use a foreign phrase, a scientific word, or a jargon word if you can think of an everyday English equivalent.

Remember that the bill must be both precise and clear. One cannot strive solely for simplicity as if it were a single good and there were no other. While striving for unstilted, clear, natural expression, one must avoid becoming conversational. In conversation, the speaker reserves the right to explain his meaning. No such right is granted one who is writing a bill. The drafter must think--he must know exactly what he wants to state. The entire meaning of a bill could turn on the choice of one key word, so words must be chosen carefully.

An example of the kind of word choice to avoid is the conversational verb construct. This verb form appears most regularly as the combination of an accepted verbal base ("speed") and an accepted preposition ("up"). The resulting formulation ("speed up") is a conversational term unacceptable in bill drafting.

To avoid confusion, the draftsman must also be consistent in his use of words. For instance, if he uses "employee" in one section, he should not use "worker" in another section merely for the sake of variety, nor should he use the same word to denote different things.

The left-hand column of the following list includes some words and phrases that should be avoided, unless there are special reasons to the contrary. Some are flowery, some are archaic, and some are vague; all lack the precision needed for clear expression. The words in the right-hand column are those which the average reader understands more readily.

AVOID

absolutely null and void
and of no effect

USE

void

AVOID

aforesaid, afore-mentioned,
before-mentioned

afforded or accorded

and/or

any and all

at such time as

at the time of his death

attorney and counselor
at law

be and the same is hereby

bonds, notes, checks, drafts
and other evidences of indebtedness

bring an action

carry out

constitute and appoint

deal with

deem

does not operate to

during such time as

during the course of

each and all

employ (meaning to use)

enter into a contract with

every person, all persons

evidence, documentary or
otherwise

evince

examine witnesses and
hear testimony

USE

"the", "that", or "those"

given

"either X or Y or both of
them" or "X and Y or either
of them"

(either word)

when

when he dies

attorney

is

evidence of indebtedness

sue

execute; complete

appoint

address; conduct

consider

does not

while

during

(either word)

use

contract with

a person

evidence

show

take testimony

AVOID

USE

expend	spend
fail, refuse, or neglect	fail
feasible	practicable, workable
formulate	make
for the duration of	during
for the reason that	because
forthwith	immediately
from and after	after
full and complete	full
full force and effect	"force" or "effect"
give consideration to	consider
give recognition to	recognize
have knowledge of	know
have need of	need
hereafter	after this act takes effect
hereinafter, hereinbefore, hereinabove, above, below, following, preceding	(these are objectionable when referring to the position of a section, or other statutory provision; if reference is necessary, specify the chap- ter, or paragraph, section, or subsection by number)
in case	if
in cases in which	"when" or "where"
in order to	to
in the event that	if
inquire	ask
in sections 1000 to 1050, inclusive	in sections 1000-1050
institute	"begin" or "start"
is able to	can

AVOID

USE

is applicable	applies
is authorized to	may
is binding upon	binds
is defined and shall be construed to mean	means
is dependent on	depends on
is directed to	shall
is empowered to	may
is entitled to	may
is hereby authorized and it shall be his duty to	shall
is hereby vested with power and authority and it shall be his duty in carrying out the provisions of this act to	shall
is required to	shall
is unable to	cannot
it is his duty to	shall
it is lawful to	may
law passed	law enacted
make application	apply
make payment	pay
make provision for	provide for
matter transmitted through the mail	mail
maximum	most
means and includes	"means" or "includes" as required
member of a partnership	partner
minimum	least
modify	change

AVOID

necessitate
 none whatever
 not later than
 null and void
 occasion (verb)
 of a technical nature
 on or after
 ordered, adjudged, and decreed
 or, in the alternative
 party
 per annum
 per day
 per foot
 period of time
 person of suitable age and
 discretion
 prior to
 prosecute its business
 provided (conjunction)
 provided, further; provided,
 however; provided that
 provision of law
 purchase
 render (meaning "to give")
 retain
 rules and regulations
 said

USE

require
 "none" or "no"
 before
 void
 cause
 technical
 after
 ordered
 or
 person (unless referring to
 party to a suit or action)
 a year
 a day
 a foot
 "period" or "time" as
 required
 adult (or state age)
 before
 conduct its business
 "if" or "but"
 "except", "but", or "however"
 or start a new sentence
 law
 buy
 give
 keep
 "rules" or "regulations"
 "the", "that", or "those"

AVOID

USE

same	"it", "he", or "him"
shall have the power to	may
sole and exclusive	exclusive
speed up	hasten, expedite
subsequent to	after
terminate	end
the place of his abode	his abode
to wit	(this is verbiage; delete it or use "namely")
under the provisions of	under
unless and until	"unless" or "until" as required
until such time as	until
utilize (meaning to use)	use
whatsoever	whatever
whensoever	"when" or "if"
wheresoever	where
whosoever	whoever
whomsoever	(archaic; improper)

Avoid adjectives such as "real", "true", and "actual", and adverbs such as "duly", and "properly". Since these ideas are normally implied, expressing them in some instances creates doubt that they are implied elsewhere. (Legislative Drafting, Reed Dickerson, page 87)

EXAMPLE He shall write his age in the appropriate blank.
(preferred)

EXAMPLE He shall write his actual age in the appropriate
(avoid) blank.

CHAPTER 4

THE BILL AND ITS PARTS

A bill is a proposed law as introduced in the legislature. The bill does not become a statute until passed by the legislature and signed by the governor -- or passed over his veto. The proper form and arrangement of a bill has been defined primarily by custom. The Montana Constitution speaks of bill titles in Article V, section 11; and section 43-508.1, R.C.M. 1947, prescribes the form of the enacting clause. None of the other bill parts are mandated by law or rule; however, the following form is now used by the Legislative Council and by legislative rule all bills must comply with the format, style, and legal form prescribed by the Council before they are introduced. Bills not prepared by the Legislative Council must be reviewed by the Council staff and typed on the automated bill drafting equipment before introduction. This equipment and procedure is further explained in Chapter 9.

Bill Arrangement

1. Bill Identification*
 - (a) designation and number
 - (b) sponsor line
2. Title*
3. Preamble
4. Enacting Clause*
5. Body*
 - (a) short title
 - (b) purpose
 - (c) definitions
 - (d) basic provisions
 - (e) penalty
 - (f) saving clause
 - (g) severability clause
 - (h) repealing section
 - (i) effective date

*A mandatory part of a bill

SAMPLE BILL FORM

BILL IDENTIFICATION

Designation & No.

Sponsor Line

INTRODUCED BY _____ BILL NO. _____

TITLE

A BILL FOR AN ACT ENTITLED: "AN ACT TO REORGANIZE THE EXECUTIVE DEPARTMENT OF MONTANA STATE GOVERNMENT, AMENDING SECTIONS R.C.M. 1947, AND REPEALING SECTIONS R.C.M. 1947."

PREAMBLE

(optional - rarely used)

WHEREAS, the Montana constitution requires that all executive and administrative offices and instrumentalities of the executive department of state government shall be allocated by law among and within not more than twenty departments.....

ENACTING CLAUSE

(mandatory)

BODY

Short title

Purpose

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Short title. This act may be cited as "The Executive Reorganization Act of 1971".

Section 2. Purpose. The purpose of this act is to create a structure of the executive department of state government which is responsible to the needs of the people of this state...

Definitions

Section 3. Definitions. As used in this act:

(1) "Executive department" means...

(2) "Reorganization amendment" means...

Basic provisions

(New Material)

Section 4. Department head. Each department head shall supervise, direct, account for, organize, plan, administer, and execute the functions vested in the department by this act or other law.

(Amendatory material)

Section 5. Section 82-3306, R.C.M. 1947, is amended to read as follows:

"82-3306. Supervision of mailing facilities. The ~~controller~~ department shall maintain and supervise any central mailing facilities."

(Designating new material)

Section 6. There is a new R.C.M. section that reads as follows:

Jurisdictional area--county planning. (1) The board of county commissioners shall

(Assigning a new section number)

Section 7. There is a new R.C.M. section numbered 11-3830.2 that reads as follows:

(discouraged - use only if absolutely necessary)

11-3830.2. Jurisdictional area -- county planning. (1) The

board of county commissioners shall by resolution at a monthly regularly called meeting:

(Tabulation
sample)

- (a) establish the jurisdictional area which shall include the area which is outside the corporate;
- (b) plan the outside limits;
- (c) which is subject to:
 - (i)
 - (ii)
 - (A)
 - (B)
- (2)

(Renumber and
amend)

Section 8. Section 94-1113, R.C.M. 1947, is renumbered 51-409, and is amended to read as follows:

"~~94-1113~~ 51-409. Penalty for violation of law. Any person, firm, or corporation violating..."

(Renumber)

Section 9. [Section 94-1114, R.C.M. 1947, is renumbered 51-410.

Penalty

Section 10. Penalty. A person convicted of violating this act shall be fined not to exceed five hundred dollars (\$500) or be imprisoned in the county jail for any term not to exceed six (6) months, or both.

Saving clause

Section 11. Saving clause. This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this act.

Severability clause

Section 12. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

OR

Nonseverability
clause

Section 12. Nonseverability. It is the intent of the legislature that each part of this act is essentially dependent upon every other part, and if one part is held unconstitutional or invalid, all other parts are invalid.

Repealer

Section 13. Sections 93-4301 through 93-4312 and sections 94-501, 95-602, and 95-703, R.C.M. 1947, are repealed.

Effective date
(discouraged - use
only as emergency)

Section 14. This act is effective on its passage and approval.

OR

Section 14. This act is effective December 1, 1975.

-End-

EXPLANATION OF BILL PARTS

BILL IDENTIFICATION

Designation and Number The blank preceding the words "BILL NO." is used to identify the bill as a House or Senate bill and the blank following is used to number the bill. The blanks are filled in manually at the time of introduction.

Sponsor Line The second line of a bill is used to identify the sponsor. The sponsor signs the bill in the blank prior to introduction (or the name of the committee sponsoring the bill is entered). If there is more than one sponsor the chief sponsor signs first. The joint rules provide that a bill introduced by request of a state agency shall so indicate by inserting, following the names of the sponsors, "By Request of _____".

TITLE

The title identifies the bill to the legislators and the public and must clearly summarize the contents of the bill. A substantial body of case law has developed over defects in titles with which the drafter should be familiar. Chapter 8 is devoted to a more detailed discussion of title problems.

If present statutes are being amended these are usually listed at the end of the title followed by the list of any repealed sections. If the bill is a general revision or recodification and the list of amended or repealed sections is extensive, accepted practice is not to list the sections.

PREAMBLE

The preamble follows the title and preceeds the enacting clause. Because of its placement it does not become a part of the law and it is rarely used. It is a preliminary statement of the reasons for the enactment of the law and begins with the word "Whereas".

ENACTING CLAUSE

The enacting clause, which is prescribed by law, separates the identification portion of the bill from the body of the bill.

BODY OF THE BILL

The body of the bill is divided into sections which are numbered consecutively.

Short Title A short title is not suitable for all enactments but when an act creates new law in a definable area, a short title enables quick future identification. When used, the short title appears as section 1 of the bill.

Purpose If it is desirable to express the policy or purpose of an

act the purpose section is preferred to a preamble because it becomes a part of the law. The purpose should be stated concisely at the beginning of the bill following the enacting clause or short title if there is one. A purpose section is not merely window dressing. Courts have consistently relied on purpose sections to construe unclear and ambiguous language. If a purpose section is necessary it should be carefully and thoughtfully drafted.

Definitions To avoid repetition and to assure clarity, a well drafted bill often contains a definition section which precedes the basic provisions of the bill. A definition section is of definite advantage:

(a) to define a general term in order to avoid its frequent repetition, such as "'Employee deductions' means all authorized deductions made from the salary and wages of an officer or employee of a state agency";

(b) to avoid repeating the full title of an officer or of an agency, such as "'Board' means the board of natural resources and conservation";

(c) to give an exact meaning to a word that has several dictionary meanings;

(d) to define a technical word that has no popular meaning in commonly understood language; and

(e) to limit the meaning of a term that, if not defined, would have a broader meaning than intended.

Certain words are defined in Section 19-103, R.C.M. 1947. If a word is used in the same sense that it is defined in Section 19-103, it is unnecessary to define it again in a bill. There are also definition sections that apply to entire titles such as 94-2-101 (Criminal Code), 91A-1-201 (Probate Code), and 68-1503 (PERS).

The drafter should scrupulously adhere to normal usage of a term. If it is necessary to use a fiction, it should be so labeled.

EXAMPLE Don't say: "The word 'automobile' includes trucks, power boats, and airplanes."

Say: "In this chapter, trucks, power boats, and airplanes shall be treated as if they were automobiles."

Basic Provisions

A bill that only amends or repeals existing laws may not present any organizational problem. Sections of the Revised Codes are usually amended in numerical order. However, an act which creates a new body of law must be thoughtfully organized. From

the standpoint of organization three types of bills contain all new material; those which contain:

- (1) one main provision supported by subordinate provisions,
- (2) several related main provisions, some of which have subordinate provisions, or
- (3) a series of related and equal provisions all dealing with one subject.

(1) One Main Provision Most new legislation is concerned with just one main idea and falls within the first type. Generally the substantive provisions of an act will be followed by the authority by which it is to be administered and then by the means to make it effective.

EXAMPLE

Section 4. Registration of tramways required. No passenger tramway may be operated in this state unless it has been and continues to be registered with the board("core" or substantive provision)

Section 5. Powers and duties of the board.
The board shall:

- (1) adopt rules related to public safety...
- (2) hold hearings in all matters relating to the exercise...
- (3) issue to the applying operator registration certificates for each passenger tramway....(administrative authority and procedures)

Section 6. Remedies to enforce compliance.
If an operator fails to comply with an order or rule of the board, the board may:

- (1) Suspend or revoke the registration of the tramway....
- (2) Bring injunctive proceedings (administrative enforcement procedure).

(2) Several Related Main Provisions Each main provision with its related subordinate divisions should be separate from the other main divisions and drafted in detail as if it constituted the entire bill.

(2) Series of Related and Equal Provisions Bills containing equal provisions relating to a common subject are arranged in a logical order if one suggests itself. Otherwise, the bill is arranged in an arbitrary order.

Penalty If a violation of an act is to result in a penalty a separate section is devoted to setting forth the penalty. The wording of this section is patterned after that used in the Montana Criminal Code of 1973.

Saving Clause Because it is normally presumed that changes in the law are in full force from the effective date, new laws could often disrupt transactions already in progress. The saving clause preserves rights and duties that have already matured or proceedings that have already begun.

If a criminal statute is repealed, and unless the act itself contains language to the contrary, Section 43-514, R.C.M. 1947, applies. It provides that the repeal of a law creating a crime does not bar prosecution for or punishment of an act already committed in violation of that law.

Another method of preserving rights and duties that have matured is to choose a date upon which the persons coming within the act must comply with its operative provision.

EXAMPLE Section 11. Act operative on January 1, 1973. A certificate is not required under this act for any facility under construction or in operation on or before January 1, 1973.

Severability Clause If a statute is found to be unconstitutional or invalid in part, the court must decide if the invalid portion is severable from the valid portion and looks to legislative intent. The Montana Supreme Court has held that inclusion of a severability clause in a bill creates a presumption that the valid portions of a bill would have been enacted without the invalid portion (Bacus v. Lake County, 138 Mont. 69, 354 P2d 1056, 1083) and thus void only the invalid portions.

Nonseverability Clause In the rare instance that the sponsor intends that the entire act should fall if one of the provisions is declared unconstitutional, a nonseverability clause may be added.

Repealer It may be necessary to repeal one or more statutes that conflict with the new act. Each statute to be repealed must be identified. If more than three consecutive code sections are to be repealed the drafter may use the word "through" to indicate the series. This method may not be used for code section numbers with a .1 because it is not clear whether such numbers would be included.

EXAMPLE Section 14. Repealer. Sections 14-501 through 14-506, 14-506.1, 14-506.2, 14-507 through 14-520, and 14-525, R.C.M. 1947, are repealed.

A statement that "all acts or parts of acts in conflict herewith are repealed" is improper and ineffective.

Effective Date Section 43-507, R.C.M. 1947, provides that "Every statute, unless a different time is prescribed therein, takes effect on the first day of July of the year of its passage and approval." Passage and approval means when signed by the Governor. An effective date should not be included in a bill unless the sponsor wants to delay the effective date or there is an emergency requiring an early effective date. An effective date before July 1 may deprive the general public of sufficient notice and deprive administrators of the act of sufficient time to prepare procedures for the new act.

MISCELLANEOUS INSTRUCTIONS FOR DRAFTING

Basic Provisions

New Material Provisions used to create new law in an area not now covered by the present statutes are referred to as "new material". The basic provisions of a new law should be divided into sections, each of which contains one idea or thought. Each section must begin with a heading or "catchline". In the past catchlines were usually added by the codifier but the present rule is to add a catchline during the drafting process. (Should a bill pass through the legislative process without catchlines, the Legislative Council staff will add the catchlines prior to the enrolling of the bill.) The catchline should be as brief as possible and clearly show what the section topic is. If the drafter feels that the catchline must be quite long to cover the meaning of the section, the section itself is probably too broad.

Amendatory Material Sections of a bill amending present law are usually arranged in numerical order by code section number. There must be a separate bill section for each code section amended. The brief simple amending clause should be used. ("Section _____, R.C.M. 1947, is amended to read as follows:") The Joint Rules provide that, "In sections amending existing statutes, matter to be stricken out shall be indicated with a line through the words or part to be deleted, and new matter shall be underlined." This means that new material added to an existing code section is underlined; new material that will become an entirely new code section is not underlined.

The Joint Rules also provide that, "No law shall be revised or amended, or the provisions thereof extended by reference to its title only, but so much thereof as is revised, amended, or extended shall be reenacted and published at length". The question of whether a subsection may be amended without setting out the entire parent section at length has never been adjudicated in Montana. (Ease of amendment is just one more reason for dividing new law into short concise sections.)

If it is necessary to amend an act passed earlier in the same session, it is wise to refer to the chapter number to clearly indicate that you intend to amend a new law or one that has been already amended in the present session. The following form is used:

Section 1. Section 3, Chapter 4, Laws of 1974, is amended to read as follows:

"50-704. Recording of affidavit of performance of annual work...."

(The Secretary of State assigns chapter numbers to the laws after they are signed by the Governor - Section 82-2209, R.C.M. 1947)

Designating New Material When a bill contains two or more sections amending present statutes and in the midst of the amendatory sections contains a section with all new material, the drafter must call this to the attention of the Legislature by using the following introductory clause to the section containing all new material:

"There is a new R.C.M. section that reads as follows:"

It is not necessary to use the introductory clause in a bill containing all new material; however, when a legislator is reading several sections containing underlining or deletions he tends to only read the underlined or deleted material.

Unless attention is called to new material in the midst of such amendatory material, the new material is often overlooked as a section of the codes that is not being amended.

Assigning A New Section Number As a rule, assigning code section numbers in a bill should be avoided because:

(1) It may violate the "must be set forth at length" rule for amending a law. By giving a bill section a code number the drafter is in effect adding a section to a chapter and thereby "extending" that chapter. A joint rule requires that any law that is extended must be set forth at length. It could therefore be argued that in order to assign a new section number the entire chapter in which that section will appear must be set forth at length.

(2) If all sections of a bill are assigned code section numbers and one of the bill sections is deleted by amendment during the legislative process, the entire bill must be renumbered - something committees usually forget to do, leaving a gap in the numbering format of the final bill.

(3) It is impossible for the legislature to insure that identical code section numbers are not assigned to more than one bill or that numbers are assigned logically in regard to all introduced legislation.

Unless the drafter feels it absolutely mandatory to assign a code section number, this should be left to the Legislative Council staff which assigns such numbers before the enrolling process and uses section number indexes to avoid duplication and to insure proper allocation of sections.

The introductory clause used to assign a new section number is "There is a new R.C.M. section numbered _____ that reads as follows:".

Tabulation Dividing a section into two or more parts (subsections) usually clarifies the law and makes it more readable. Each subsection is designated by an Arabic numeral in parentheses. Tabulation begins (1), (2), (3); then (a), (b), (c); then (i), (ii), (iii); then (A), (B), (C).

Renumber and Amend The same problems can be said to exist for renumbering sections as for assigning code section numbers. However, it is sometimes necessary - especially in recodification and general revision laws - to retain the legislative history of certain statutes and move them into a revised package. The renumber and amend form is used if the present statute must be amended and transferred to a new position within the codes:

"Section _____, R.C.M. 1947, is renumbered _____, and is amended to read as follows:"

Renumber When it is necessary to transfer a code section without change to fit within a new law or existing law, the renumber form is used. Renumbering should also be avoided unless considered absolutely necessary by the drafter. It is a method for retaining the legislative history but often leads to difficult and confusing research. The clause is "Section _____, R.C.M. 1947, is renumbered _____."

CHAPTER 5

SPECIAL TYPES OF BILLS

Revenue Bills The 1889 Constitution provided that revenue bills be introduced in the House. The provision was deleted from the 1972 Constitution. Under the 1889 Constitution the Court construed this provision to mean bills relating to the raising of money for defraying the expenses of the general government (Morgan v. Murray, 134 M 92) and not to those incidentally creating revenue. Bills imposing tax or license fees to enforce policing regulations were not considered revenue raising measures.

Validating Bills A validating bill is used to cure any irregularities in actions, proceedings, or transactions carried out under authority of existing law. Each session a bond validating act is passed by the Montana Legislature. This type of bill may be used to validate other types of actions (such as approval of plats, distributions of revenues according to a prior census, petitions for creation of districts, etc.,) as long as it does not impair the obligation of contracts or disturb a vested right.

In the past bond validating acts have broken all rules concerning style and language in legislative drafting. An example of a concise validating act follows:

EXAMPLE

Section 1. Short title. This act may be cited as "The 1975 Bond Validating Act".

Section 2. Definitions. As used in this act:

(1) The term "public body" means any political or governmental subdivision of the state of Montana and includes a county, city or town, school district, etc. (It probably is not necessary to enumerate.)

(2) The term "bonds" includes all instruments representing indebtedness, the borrowing of money, or a charge or encumbrance on specific revenue or property of a public body.

Section 3. Validation. All bonds issued by any public body of this state and related proceedings, regardless of any defects in such proceedings, are validated. Bonds of a public body, whether issued before or after the effective date of this act, under the authority of proceedings taken prior to such effective date are valid.

Section 4. Saving clause. This act does not apply to any action instituted before January 1, 1974, in which the validity of certain proceedings or bonds is at issue.

Section 5. Effective date. This act is effective on passage and approval.

Interstate Compacts An interstate compact is a contract among several states that is enacted into law in each contracting state. A compact must be enacted in substantially the same form in each party state. As an example the drafter may inspect the several interstate compacts adopted by Montana such as the Driver License Compact (Section 31-163); Compact on Juveniles (Section 10-1001); Library Compact (Section 44-601); Mental Health Compact (Section 80-2412).

Uniform or Model Acts Uniform acts are prepared by the National Conference of Commissioners on Uniform State Laws and generally are intended to be followed exactly. The purpose of a uniform act is to cover an area of law by a method that will avoid conflicts among the laws of different states. An example is the Uniform Reciprocal Enforcement of Support Act, sections 93-2601-41 through 93-2601-82. Model or "suggested" acts are prepared by the drafting committee of the Council of State Governments and by other persons and organizations and are intended as guides for legislation in which uniformity is not necessary. A model act is essentially a suggested method for handling a given area of law by providing guidelines within which a state may substitute sections to accommodate local peculiarities. An example is the Montana Business Corporation Act, sections 15-2201, et seq. Copies of the publication Suggested State Legislation by the Council of State Governments are available in the Legislative Council library.

Appropriation Bills The Montana Constitution, Article V, section 11 (4), requires every appropriation other than general appropriations for the operation of government to be "made by separate bill, containing but one subject". The Governor's Office of Budget and Planning prepares the large general appropriation bills covering the usual expenses of state government. The drafter may wish to refer to these bills (which are printed in the Montana Session Laws) for guidance on definitions, format, etc.

The Montana Supreme Court has held that an appropriation may be part of a nonappropriation bill (and not violate the unity of subject rule) if the appropriation is incidental to the single subject of the bill (Hill v. Rae, 52 Mont. 378 and State v. State Board of Education, 97 Mont. 132). For example, if a bill creates a governmental agency or program, a section of the bill appropriating money to fund the program would be proper. However, the most recent (and probably the safest) practice has been to create the new entity, provide for necessary administrative procedures, etc., in one bill and appropriate the necessary money therefor in a separate bill.

Each appropriation bill must contain:

(1) The name of the principal department or governmental agency to which the appropriation is made.

(2) The name of the division, bureau, or section within the

department or agency.

(3) The name of the program (if any) for which the money is appropriated.

(4) The name of the treasury fund and account from which the funds are to be appropriated.

(5) The fiscal year or years for which the moneys are appropriated.

(6) A statement of the purpose of the appropriation and any restrictions thereon.

EXAMPLE -- APPROPRIATION BILL

AN ACT APPROPRIATING EIGHTY-FIVE THOUSAND DOLLARS (\$85,000) TO THE DEPARTMENT OF INTERGOVERNMENTAL RELATIONS FOR THE LOCAL GOVERNMENT STUDY PROGRAM.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. The following moneys are appropriated for the biennium ending June 30, 1977:

(1) To the department of intergovernmental relations, planning and economic development division, local government study program.

	Fiscal Year ending 6/30/76	Fiscal Year ending 6/30/77
(a) From the earmarked revenue fund, local government account	\$25,000	\$25,000
(b) From the general fund	\$25,000	\$10,000

Section 2. The moneys appropriated by this act may be used for hiring staff and necessary office expenses to carry out the program described in Title 16, chapter 43, R.C.M. 1947.

Constitutional Amendments Article XIV, section 8 of the Montana Constitution provides for constitutional amendment by legislative referendum. The proposed amendment must receive an affirmative vote by 2/3 of the Legislature before it is referred to the people. Article VI, section 10 provides that bills proposing amendments to the Montana Constitution need not be submitted to the governor for his signature. Title 37, chapter 1, R.C.M. 1947, contains the general law relating to procedures to be followed by the Secretary of State and other officials when submitting a constitutional amendment to the electorate. Article XIV, section 8 provides that unless the amendment provides otherwise the amendment will become effective on July 1 following certification

of the election returns. Section 37-105, R.C.M. 1947, provides that the title of a constitutional amendment may not exceed 100 words.

EXAMPLE -- CONSTITUTIONAL AMENDMENT

_____ BILL NO. _____

INTRODUCED BY _____

A BILL FOR AN ACT ENTITLED: "AN ACT TO SUBMIT TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE II, SECTION 18 OF THE MONTANA CONSTITUTION TO PROVIDE THAT THE LEGISLATURE MAY DETERMINE WHEN THE STATE OR ITS SUBDIVISIONS MAY NOT BE SUED."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Article II, section 18 of the Montana constitution is amended to read as follows:

"Section 18. State subject to suit. The state, counties, cities, towns, and all other local governmental entities shall have no immunity from suit for injury to a person or property, unless granted such immunity by the legislature. This provision shall apply only to causes of action arising after July 1, 1973."

Section 2. If approved by the electorate this amendment shall be effective January 1, 1976.

Section 3. This amendment shall be submitted to the electors of the state of Montana at the general election to be held November 2, 1976, by printing on the ballot the full title, sections 1 and 2 of this act, and the following:

☐ For the above amendment which would allow the legislature to determine sovereign immunity.

☐ Against the above amendment for continuing to prohibit sovereign immunity."

See Appendix E for an alternative form for a constitutional amendment.

Referenda The Montana Constitution, Article III, section 5, provides that the people may approve or reject any act of the Legislature except an appropriation of money. The Legislature may order a proposed law to be voted upon by the people or the people may petition to so vote. An "Act" does not include a joint resolution ratifying an amendment to the U.S. Constitution (Hatch v. Murray, 31 St. Rep. 753).

Section 37-106, R.C.M. 1947, provides that the Attorney General must approve the form of the referendum ballot. When the Legislature orders an act to be referred to the people the

Secretary of State sends a copy of the proposed law to the Attorney General (Section 37-104.1, R.C.M. 1947) so that the Attorney General may write his explanatory statement of the measure. At the same time the Secretary of State asks the Attorney General to approve the ballot form, which is usually prescribed in the act ordering the referendum which in turn should be in the form prescribed in section 37-106.

Usually, the last section of a bill for a referendum is the section ordering a vote of the people.

EXAMPLE - REFERENDUM

_____ BILL NO. _____

INTRODUCED BY _____

AN ACT TO AMEND THE ALCOHOLIC BEVERAGE CODE TO RAISE THE LEGAL DRINKING AGE TO NINETEEN PROVIDING THAT THE PROPOSED ACT BE SUBMITTED TO THE ELECTORS OF THE STATE OF MONTANA.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 4-161, R.C.M. 1947, is amended to read as follows:

"4-161. Age limit for sale of liquor. No person shall sell, give or otherwise supply liquor to any person under the age of ~~eighteen-(18)~~ nineteen (19) years."

Section 2. Section 1 of this act is effective on January 1, 1976.

Section 3. The question of whether this act will become effective shall be submitted to the electors of the state of Montana at the general election to be held November 2, 1975, by printing on the ballot the full title, sections 1 and 2 of this act, and the following:

☐ For referendum measure No. _____ relating to raising the legal drinking age to nineteen.

☐ Against the said measure No. _____."

Bills With Fiscal Impact Section 43-1001, R.C.M. 1947, provides that all bills having an effect on revenues, expenditures, or fiscal liability of the state may not be reported out of committee without a fiscal note, which estimates the dollar amount of such fiscal impact, attached.

When a bill is reviewed by the Legislative Council staff prior to introduction its possible fiscal impact is considered. If a fiscal note is needed, a stamp is affixed to the bill and signed by the Director of the Council. At the time a bill is introduced, the President of the Senate or the Speaker of the

House must determine whether the bill needs a fiscal note. The notation of the Legislative Council helps save the presiding officer much time in determining if a fiscal note should be ordered. When he determines the need for a fiscal note, the presiding officer requests it from the Budget Director, who is required by law to return the note within six days.

The drafter can simplify the process of judging fiscal impact by keeping the fiscal note requirement in mind when drafting bills and indicating on the bill draft that a fiscal note may be required. If the drafter thinks a fiscal note is needed he should ascertain the sponsor's intent as to additional budget, staff, etc., needed to accomplish the bill's purpose.

The fiscal note is attached to the bill and the committee considers it with the bill. Should a bill be introduced without a fiscal note, the sponsor, the committee considering the bill, or the majority of the House considering the bill on second reading, may request the presiding officer to request a fiscal note.

Section 43-517 is also concerned with fiscal impact. This statute requires any law directing a local government unit to perform an activity or provide a service or facility that will require additional funds, to contain a means of financing such activity or service.

Therefore, a drafter must be careful when drafting bills concerning additional local government services or activities and include provision for additional mill levy or remittance of state funds to the local government sufficient to fund the new activity. A local government unit may refuse to administer a law that does not comply with this section.

CHAPTER 6

R E S O L U T I O N S

The only type of instrument other than a bill that may be introduced in either house of the Legislature is a resolution.

Simple resolution The 1974 Joint Rules defined a simple resolution as a "formalized motion passed by one house only...(that) may be used to amend the rules of one house or to express the desire, opinion, sympathy, or request of the house adopting it." The proposed 1975 Joint Rules provide that the only simple resolutions which may be introduced are those relating to internal procedures regulating the affairs of either house. A simple resolution does not require three readings or a roll call vote as does a bill or joint resolution.

Joint resolution The Joint Rules state that a joint resolution may be used to express desire, opinion, sympathy, or request of the Legislature; to amend the Joint Rules; and to ratify or propose amendments to the United States Constitution.

A joint resolution is effective upon passage by both houses and need not be submitted to the Governor for his signature (Montana Constitution, Article VI, section 10). Some common uses of joint resolutions are:

(1) to send a request or instruction to a state agency, to Congress, or the President;

(2) to express sympathy to relatives of a deceased legislator;

(3) to amend or adopt joint rules;

(4) to express support for or disapproval of federal legislation;

(5) to prescribe duties, compensation, etc. of legislative employees;

(6) to repeal, amend, or direct addition of rules in the Montana Administrative Code in accordance with Section 82-4203.1, R.C.M. 1947. The use of a joint resolution to amend an agency's administrative regulation is based upon the theory that rule-making is a legislative function delegated to the agency. The Legislature can control the discretion of its agent by means of the joint resolution. (Unlike bills and other joint resolutions, an administrative code resolution may be introduced and transmitted at any time during the session.)

Resolutions should be used only for proposals having none of the mandatory characteristics of law. In Gildroy v. Anderson, (30 St. Rep 389, 507 P2nd 1069) the Court said, "The effect and validity of a joint legislative resolution must be decided upon a consideration of the purpose intended to be accomplished and in

light of the applicable provisions of the Montana Constitution." The Court went on to say, "A joint resolution is not a general law and cannot be used to control the discretion of the governor."

The format of resolutions has been prescribed by custom. In resolutions other than those proposing amendments to the Administrative Code, it would seem that even the unity of subject rule need not be followed since the resolution does not have any binding effect. Customary formats are presented in this chapter and must be followed by the drafter.

The preamble of a resolution is identical to the preamble of a bill. It usually begins with "WHEREAS" and states the purpose of, or reason for the resolution.

In a resolution a resolving clause takes the place of the enacting clause of a bill. In the past the body of a resolution has consisted of one or more paragraphs, each beginning with the statement "BE IT FURTHER RESOLVED". This form may still be used and is shown below as an alternative. The drafter may wish to number the paragraphs rather than continue to repeat the rather archaic language.

EXAMPLE - JOINT RESOLUTION (A simple resolution is the same except the title and resolving clause show that it is a simple rather than joint resolution.)

A JOINT RESOLUTION OF THE SENATE AND HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING MOTORISTS TO DRIVE WITH THEIR HEADLIGHTS ON DURING THE DAYTIME.

WHEREAS, hundreds of Montanans lose their lives in traffic accidents each year, and

WHEREAS, one out of every five traffic accidents on the open highway is the result of head-on collisions, and

WHEREAS, etc.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the motoring public of Montana be encouraged to drive with their headlights on low beam in the daytime to deter head-on collisions on the open highway.

(2) That copies of this resolution be sent by the Secretary of State to the publisher of each newspaper in the state.

(3) That this resolution, etc.

(ALTERNATIVE)

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the motoring public of Montana be encouraged to drive with their headlights on low beam in the daytime to deter head-on collisions on the open highway.

BE IT FURTHER RESOLVED, that copies of this resolution be sent by the Secretary of State to the publisher of each newspaper in the state.

BE IT FURTHER RESOLVED, that this resolution, etc.

EXAMPLE - REPEAL OF ADMINISTRATIVE CODE RULE
(See Section 82-4203.1, R.C.M. 1947)

SENATE JOINT RESOLUTION NO. 69

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REPEALING RULE 42-3.26(14)-S26200(1) OF THE MONTANA ADMINISTRATIVE CODE, CONCERNING STANDARDS FOR TAVERNS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Legislature wishes to encourage sidewalk cafes, open-air restaurants, and taverns; and

WHEREAS, rule 42-3.26(14)-S26200(1) prohibits licensed liquor and beer retailers from selling liquor or beer outside of the building for which the license is issued.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the rule in Section 42-3.26(14)-S26200(1) of the Montana Administrative Code, to the extent it prohibits the licensure of such open-air facilities, or prohibits them from being considered as parts of premises so licensed, is repealed.

BE IT FURTHER RESOLVED, that in order to give the Department of Revenue time to revise this rule in order to permit open-air taverns to operate, the effective date of this resolution is July 1, 1976.

CHAPTER 7

COMMITTEE AMENDMENTS

Bill amendments are prepared by the Legislative Council staff, committee secretaries, lobbyists, or by the legislators themselves. Printed forms are available for use by the standing committees and the committees of the whole. The first draft of amendments for presentation to the committee should be typed on plain white paper.

The amendment must identify the specific copy of the bill to be amended, i.e. introduced (white), second reading (yellow) or third reading (blue).

Reminders in amending bills. (1) Amend the title if the amendment to the bill requires change in the title.

(2) Watch the catchline and amend it too if necessary.

(3) Don't forget Article V, section 11 of the Montana Constitution states that no bill shall be so altered or amended on its passage through the Legislature as to change its original purpose.

(4) If the proposed amendment is extensive, it may be easier to rewrite the entire bill - this is called a substitute bill. The Joint Rules provide that if the amendment is relevant to the title and subject matter of the original bill and is quite extensive so that a standard amendment would be long and difficult to comprehend, the bill may be amended by striking all of the bill following the enacting clause and substituting an entirely new bill.

EXAMPLE - STANDING COMMITTEE AMENDMENT

Date _____

Mr.

Ms. (President or Speaker)

We, your committee on (Highways), having had under consideration (House or Senate) Bill No. (123) entitled "AN ACT AMENDING SECTION 32-2137, R.C.M. 1947, TO AUTHORIZE RIGHT TURNS AT INTERSECTIONS ON RED OR STOP SIGNALS", respectfully report as follows: That Senate Bill No. 123, second reading (yellow) be amended as follows:

1. Amend title, line 7.

Strike: "RIGHT"

Insert: "LEFT"

2. Amend page 5, section 6, lines 4 through 17.

Strike: Section 6 in its entirety.

Re-number: All subsequent sections.

3. Amend page 45, section 56, line 10.
Following: "foot"
Strike: "Powder"
Insert: "powdered"
4. Amend page 32, section 43, line 10.
Following: line 10
Insert: "such treasurer is ~~an-officer~~, located or in"

OR

1. Amend the bill, pages 1 through 20.
Strike: All of the bill following the enacting clause.
Insert: "Section 1. Section 70-101, R.C.M. 1947, is
ammended to read as follows:
"70-101.....
Section 2....
Section 3...., etc."

EXAMPLE - COMMITTEE OF THE WHOLE AMENDMENT

MR. CHAIRMAN: I MOVE TO AMEND Senate Bill No. 123 as follows: (amendment format identical to standing committee amendments)

CHAPTER 8

B I L L T I T L E S

GENERAL

Article V, section 11 (3) of the Montana Constitution provides:

Each bill except general appropriation bills and bills for the codification and general revision of the laws, shall contain only one subject, clearly expressed in its title. If any subject is embraced in any act and is not expressed in the title, only so much of the act not so expressed is void.

As a result of widespread abuses by use of deceptive titles in early American legislatures, 41 states now provide that a bill may contain only one subject which must be expressed in the bill title. (The 1889 Montana Constitution contained a similar provision in Article V, section 23 and the cases discussed below were decided under that Constitution. The provision in the 1972 Constitution differs only in grammar.)

The main purpose of the constitutional provision is to insure that the title of a bill gives reasonable notice of the content to legislators and the public. It also prevents multi-subject legislation from being passed by the combined votes of the advocates of separate measures, when no single measure could be passed on its own merits.

The Montana Supreme Court has considered the sufficiency of title question more than 65 times. The drafter should read these cases, which are listed in Shepard's Citations, in order to more fully comprehend title drafting problems. Under the 1972 Constitution if a law is challenged as having a defective title the action must be brought within two years after the effective date of the law.

The Court has traditionally liberally construed title requirements saying, "Sound policy and legislative convenience dictate a liberal construction of the title of statutes to maintain their validity. Infraction of this constitutional clause must be plain and obvious to be recognized as fatal" (Rosebud County v. Flinn, et al., 109 Mont. 537, 544).

The Court has developed nine general legal principles for determining whether any particular act is invalid because of a defective title. The first five principles were set forth in the leading case of State v. McKinney, 29 Mont. 375, 380.

First. The purposes of this constitutional provision are to prevent the legislature from the enactment of laws surreptitiously; to prevent "logrolling" legislation; to give to the people general notice of the character of proposed legislation, so they may not be misled; to give all interested an opportunity to appear before committees of the

legislature and be heard upon the advisability of the proposed legislation; to advise members of the legislature of the character of the proposed legislation, and give each an opportunity to intelligently watch the course of the proposed bill; to guard against fraud in legislation, and against false and deceptive titles. These purposes have been so plainly announced by this court in numerous opinions that a statement of the rule and a citation of cases would seem sufficient.

Second. While all the provisions of the constitution are "mandatory and prohibitory", yet the courts, bearing in mind that the legislature is a coordinate branch of the government, and that its action, if fair, should be sustained, have given this section of the constitution a liberal construction, so as to not interfere with or impede proper legislative functions.

Third. The legislature is the judge, to a great extent, at least, of the title which it will prefix to a bill; and the court has no right to hold a title void because, in its opinion, a better one might have been used.

Fourth. The title is generally sufficient if the body of the act treats only, directly or indirectly, of the subjects mentioned in the title, and of other subjects germane thereto, or of matters in furtherance of or necessary to accomplish the general objects of the bill, as mentioned in the title. Details need not be mentioned. The title need not contain a complete list of all matters covered by the act.

Fifth. If the court, after an application of all these principles, is still in doubt as to the constitutionality of the bill, it should sustain the act.

In the 1907 case of Evers v. Hudson, 36 Mont. 135, 142 the Court added four more principles:

(6) This provision of the Constitution relates to matters of substance, and not merely to matters of form.

(7) If a title fairly indicates the general subject of the act, is comprehensive enough in its scope reasonably to cover all the provisions thereof, and is not calculated to mislead either the legislature or the public, this is a sufficient compliance with the constitutional requirement.

(8) Generality or comprehensiveness in the title is no objection, provided the title is not misleading or deceptive and fairly directs the mind to the subject of the law in a way calculated to attract the attention truly to the matter which is proposed to be legislated upon.

(9) Meaningless words and phrases may be discarded by construction, and if, after such elimination, the title

clearly expresses the subject of the act, it is sufficient.

Title challenges under this section of the Constitution may be brought either on the grounds (1) that the title contains more than one subject or (2) that the title does not clearly express the subject of the bill, or both.

It is not always easy to distinguish between these two parts of the constitutional requirement. Most of the Supreme Court decisions deal with the clear expression of subject requirement or with an indistinguishable mixture of both requirements.

UNITY OF SUBJECT

The Court has never declared an act unconstitutional because of plurality of subject in a title, although the issue has been raised many times.

The Court has repeatedly followed its 1907 decision in Evers v. Hudson concerning unity of subject where it said:

The object of the constitutional provision now under consideration is not to embarrass honest legislation, but to prevent the vicious practice, which prevailed in states which did not have such inhibitions, of joining in one Act incongruous and unrelated matters. The rule of interpretation now quite generally adopted is that, if all parts of the statutes have a natural connection and can reasonably be said to relate, directly or indirectly, to one general and legitimate subject of legislation, the Act is not open to the charge that it violates this constitutional provision; and this is true no matter how extensively or minutely it deals with the details looking to the accomplishment of the main legislative purpose. Or, stating the converse of the proposition, it may be said that if, after giving the Act the benefit of all reasonable doubts, it is apparent that two or more independent and incongruous subjects are embraced in its provisions, the Act will be held to transgress the constitutional provision, and to be void by reason thereof.

Even though the Court has never invalidated an act on the sole grounds of violation of the unity of subject rule, the issue is often raised in constitutional challenges which also contain stronger grounds. In the 1964 case of Steen v. Murray, 144 Mont. 61, which concerned a gambling initiative, in dicta the Court said that although the measure must fall because the Legislature cannot constitutionally legalize lotteries (the people by initiative are subject to the same rules as the Legislature, State ex rel. Palagi v. Regan, 113 Mont 343). "Even if we were to consider it in separate parts, it would fail because of Article V, section 23 of the Constitution of Montana, because it would contain more than one subject..."

CLEAR EXPRESSION OF SUBJECT

The Supreme Court has said that the sufficiency of title provision of the Constitution is designed to prevent legislators and the people from being misled by false or deceptive titles. The Court succinctly summarized this purpose in Johnson v. Meagher County, 116 Mont. 565, 570:

Stated briefly, those purposes are to restrict the Legislature to the enactment of laws the subjects of which are made known to lawmakers and to the public, to the end that any one interested may follow intelligently the course of pending bills, to prevent the legislators and the people generally being misled by false or deceptive titles, and to guard against the fraud which might result from incorporating in the body of a bill provisions foreign to its general purpose and concerning which no information is given by the title. The test under this provision of the Montana Constitution is simply this - Is the title of legislation in question of such character as to mislead the public or members of the legislature as to the subjects embraced?

In Sigety v. Board of Health, 157 Mont. 48 (1971) the Court held that a bill entitled: "THE DREDGE MINING REGULATION AND LAND PRESERVATION ACT" violated the clear expression of purpose provision of the Constitution and discussed the constitutional provision as follows:

"It (the constitutional provision) is not satisfied unless the object of the legislation is clearly so expressed."

In State v. Cunningham, 35 Mont. 547, 551, 90 P. 755, 756, this Court declared:

"The purpose of this statute must be determined by its title. It is not competent to use one title and explain in the body of the act that it means something else. * * * This Court has no power to enlarge the title of this act by holding that public domain includes private ranges or inclosures belonging to individuals."

". . . . The respondent's contention that this whole act is void must be upheld."

In the case of State ex rel. Holliday v. O'Leary, 43 Mont. 157, 165, 115 P. 204, 206, in making reference to the foregoing provision of the State Constitution the Court observed:

The reasons which prompted the enactment of the constitutional provision now under consideration are stated by Mr. Justice Hunt, for the court, in State v. Anaconda Copper Min. Co., 23 Mont. 498, 59 P. 854, as follows: "The purposes of the clause of the constitutional mandate that the subject of the bill shall be clearly expressed in its title

have been considered and defined by this Court in State v. Mitchell, 17 Mont. 67, 42 P. 100; Jobb v. County of Meagher, 20 Mont. 424, 51 P. 1034, and the authorities cited in these cases. Briefly summarized they are: To restrict the legislature to the enactment of laws the objects of which legislators and the public as well may be advised of, to the end that any who are interested, whether as representatives or those represented, may be intelligently watchful of the course of the pending bill. The limitation is likewise designed to prevent legislators and the people from being misled by false or deceptive titles, and to guard against fraud in legislation by way of incorporating into a law provisions concerning which neither legislators nor the public have had any intimation through the title read or published.' However refined the distinction we have made above may appear, it is not without merit. It is part of our constitutional history that during the early years of our existence as a nation, few, if any, of our state Constitutions contained a provision similar to the one referred to herein. It is doubtful if any state Constitution now omits it. It was early discovered that ambitious or designing legislators, prompted by selfish motives or motives of less merit, procured the enactments of measures by reason of their high sounding or popular titles, when in fact the title merely cloaked a purpose contrary to that expressed; and it was to prevent the members of the Legislature and the people generally from being thus imposed upon that the provisions have been adopted. An interesting historical sketch of the conditions which led to the adoption of a like provision in the Constitution of New York will be found in Matter of New York, 57 App. Div. 166, 68 N.Y. Supp. 196.

The framers of our Constitution wisely held that it is not a hardship to require that every title shall clearly express the single purpose of the bill; but, even if it should prove a hardship, that it is better that an act be held inoperative, than that it be passed under a title which might deceive the unwary.

The title of said act: "The Dredge Mining Regulation and Land Preservation Act" is drafted in the simplest language. So simple, concise, and plain is it written that it construes itself. It is a dredge mining regulation only and to that extent only is it a land preservation act. The language of the title restricts it strictly to the objectives just mentioned. It limits land preservations "in or near a stream or riverbed" to land disturbed by dredge mining.

Moreover, the title of the act would only alert the Legislature and the public to the fact dredge mining was sought to be regulated. Neither the Legislature nor the public would suspect that other types of mining methods which can result in disturbing the land in or near a stream or riverbed in the search for precious minerals are, in addition to the dredge boat, the sluice-washing plant, hydraulic water pressure systems, and rotary gravity separation mills, fed by

mechanical systems, shovels, et cetera capable of moving ten cubic yards or more of earth or rock material per day.

Among the common minerals situated in or near a stream or riverbed in the State of Montana are the following: gold, gypsum, limestone, potassium, sodium, coal, talc, phosphate.

None of the methods of mining set forth above with the single exception of dredge mining, are included in the title of the act being challenged in this action. The respondent used, until he was stopped from mining by the act complained of, the sluice-washing plant method fed by a machine capable of moving ten cubic yards of earth or rock per day.

In the case before this Court, the title of the act being challenged does not mention the sluice-washing plant method; therefore, it cannot be successfully contended that the title clearly or at all expressed directly or indirectly the subject of sluice-washing plant methods of mining or any methods at all but the dredge.

In the 1970 case of Helena v. Omholt, 155 Mont. 212 the Court held that a section of a bill concerning distribution of state funds to city police reserve funds was void because the title to the bill said it was an appropriation to carry out provisions of a specific statute and then the section of the bill in question proceeded to nullify that specific statute. No reference to this defeating purpose was made in the title. The Court said, "For the foregoing reasons, House Bill No. 557 contains a false and deceptive title." In the 1972 case of Morrison-Maierle, Inc. v. the City of Forsyth, 160 Mont. 69, the Supreme Court held that the deletion of a paragraph in a statute relating to bid requirements for contracts awarded by cities was unconstitutional because such deletion was not mentioned in the title. The title was "AN ACT AMENDING SECTION 11-1202, R.C.M. 1947, TO INCREASE THE MONETARY LIMITATION ON PURCHASES". In addition to increasing the monetary limit the bill also omitted the final paragraph of section 11-1202 which read "all necessary contracts for professional technical, engineering and legal services are excluded from the provision of this act".

By omitting the last paragraph of the section, the bill subjected the plaintiff engineering firm to bid requirements, a matter not expressed in the title (and in fact had it been expressed in the title it could have been attacked as containing more than one subject). The Court voided that part of the bill that deleted the last paragraph.

The drafter should avoid long titles which detail each provision of the bill. There is much greater danger that the title will be misleading if the title is too specific. As an example, in the Sigety case discussed above, had the drafter referred to "general mining methods which disturb land in or near a stream or riverbed" instead of simply "dredge Mining" the bill might not have been declared unconstitutional.

In the 1971 case of City of Billings v. Smith, 158 Mont. 197, the Court upheld the Minimum Wage Act which was enacted with the following title:

AN ACT TO ESTABLISH MINIMUM WAGES AND HOURS FOR EMPLOYEES IN THE STATE OF MONTANA; DELEGATING TO THE COMMISSIONER OF LABOR THE DUTY OF ADMINISTERING THE ACT; AND PROVIDING ENFORCEMENT.

The Court said, "Here we have a simple, brief title which grants the Commissioner of Labor the authority and duty to administer the Act....the title puts anyone on notice that the Act seeks to regulate wages and hours and delegates the duty of administering the Act to the Commissioner. Thus, we conclude the Act does not violate Article V, section 23 of the Montana Constitution (1889)". In short, a title is adequate if it provides a reasonable person with general notice of the thing which the contents of the bill will accomplish.

EXCEPTIONS TO SUFFICIENCY OF TITLE PROVISION

As stated in Article V, section 11(3), general appropriation bills and bills for the codification and general revision of the laws are exempt from the unity of subject and clear expression of subject rules. The Court explained the reason for this exception in State v. District Court, 49 Mont. 146, 151.

The obvious reason for the exception of appropriation bills and bills for the codification and general revision of the laws is that the first are necessary for the maintenance of the government, and hence their validity ought not to be open to question for informality; and the latter are so extraordinary in their character that both the members of the public and the legislature are presumed to know what is being done. Furthermore, it would be impracticable to formulate a title which would cover every subject embraced in such a bill.

General Appropriation Bills

In order to fall within the exception, an appropriation bill must be a general appropriation bill, that is, it may embrace nothing but appropriations for "the ordinary expenses of the legislative, executive, and judicial branches for interest on the public debt and for public schools" [Constitution of Montana, 1972, Art. V, Section 11(4)]. Further, the incidental provision of an appropriation bill must be germane to the appropriation if it is to fall within the exception. The Court has held that provisions relating to the expenditure of the money appropriated, or its accounting, may be included in an appropriation bill without being mentioned in the title, even when the provisions had the effect of amending or repealing general statutes (State v. Ford, 115 Mont. 165, 171). However, in Helena v. Omholt, mentioned above, the Court said, "Appropriation bills should not be held to amend substantive statutes by implication...such tactics are recognized as exceedingly bad legislative practice." (The appropriation bill in question contained a section which was

irreconcilable within an existing statute and the lower court had held that the appropriation measure, being a later bill, impliedly repealed the earlier statute.)

Codification and General Revision In State v. District Court, 49 Mont. 146, 150, the Court said that a bill whose plain purpose was to revise the laws on a particular subject is within the revision exception as well as an omnibus revision bill covering many subjects (or all of them, as would be the case in a major recodification as was last done in 1947).

In the past the Court has found that certain bills came within the codification or general revision exception although the titles did not specifically claim the bills were such. The Court has never found a bill not to come within the exception when the title indicated that the bill was a codification or revision.

If a bill is intended to be a codification or general revision, the title should so state.

EXAMPLE "AN ACT FOR THE CODIFICATION AND GENERAL REVISION OF LAWS RELATING TO PUBLIC SCHOOLS."

INCLUDING AMENDED SECTION NUMBERS IN TITLE

There is diversity of opinion as to whether or not reference by number only to a code section to be amended or repealed is sufficient in a title. However, all authorities agree that the title is sufficient if the number of the section to be amended or repealed and an indication of the subject matter of the amendment is included in the title. "Reference in the title of an amendatory act to the subject matter of the section to be amended need not be so comprehensive as to constitute a complete index to or abstract of the section. All that is required in such case is a reasonable degree of certainty as to the statute to be amended." (State v. Duncan, 74 Mont. 428)

Therefore, a title of a bill should indicate the general purpose of the amendment as well as list the code sections amended or repealed.

EXAMPLE "AN ACT TO AMEND SECTIONS _____ RELATING TO THE GENERAL FISCAL DUTIES OF THE STATE TREASURER."

If there are numerous sections to be amended a better method is to set out the purpose of the amendment first and then list the sections to be amended.

EXAMPLE "AN ACT TO AMEND THE LAWS RELATING TO SALE OF LANDS FOR TAXES BY COUNTY TREASURERS; AMENDING SECTIONS _____; AND REPEALING SECTIONS _____."

If the bill is a general revision or codification bill it is not necessary to list all of the affected sections in the title.

CHAPTER 9

COMPUTERIZED BILL DRAFTING

The Legislative Council utilizes two major integrated computerized systems for research and bill drafting. The research system is called SIRS (Statutory Information Retrieval System). It consists of the full text of the Montana Constitution and the Revised Codes on a computer disc. Research can be accomplished in a fraction of the time formerly required because the computer determines the precise location by section and sentence of every key word in the Codes. For instance, a drafter can frame a search on the computer to print out every section of the Codes containing the word "governor" and have the list in seconds. The Planning and Economic Development Division of the Department of Intergovernmental Relations is responsible for framing a search through this system. The statutory search service is available to other state agencies and the public for a fee.

The bill drafting system is called ALTER (Automated Legal Text Entry and Revision), a computerized, telecommunications-based text editing system which permits many different text input, editing, and formatting activities to be carried out concurrently through the use of typewriter terminals attached to a computer. Text entered at the terminal by an operator is automatically assembled into documents which can be retrieved, amended, corrected, or deleted at computer speeds. Line width, page depth, and tab settings become integral parts of each document.

Statute sections can be retrieved from the SIRS data base. By means of special two-character format control codes, selected text can be automatically overstricken, underscored, and/or capitalized at printout time. The standard material in a bill such as the bill identification, enacting clause, and introductory clauses are automatically formatted by retrieving specified documents that are stored for the use of all operators. Page numbering and sequential numbering of section headings are other automatic formatting facilities used. When input of the bill is complete, it is stored and need never be typed or proofed again. It can be retrieved for amending, engrossing, and enrolling. Because only the amendments need to be entered and proofed, the terminal operator and proofers are relieved of completely retyping and reproofing this now amended bill. This same bill may be amended several times using the same procedure. Bills can be printed out at the terminal at the rate of 15 characters per second or at a maximum speed of 600 lines per minute at the data processing bureau.

From the enrolled bill in storage, a program of the ALTER system will produce a magnetic tape which will interface with photo-composition equipment and camera-ready copy prepared to print the session laws and the revised codes without further type-setting or proofing required.

CHAPTER 10

C L E R I C A L I N S T R U C T I O N S

Bills prepared by persons not on the Legislative Council staff must be submitted to the staff for review and typing on the automated bill drafting equipment before introduction. Therefore, it is not mandatory that bills be presented in perfect form although this would certainly speed up the procedure.

General Instructions.

- (1) Use 8 1/2 x 11 inch paper with 25 double-spaced lines.
- (2) Double space entire bill, including title.
- (3) Pica type - good black ribbon
- (4) 55 spaces per line - maximum 60 spaces
- (5) Left margin 3 spaces to the right of vertical ruled line on district court paper
- (6) Only one copy needed for Council use
- (7) All sections, subsections, sub-subsections, and paragraphs are indented just 5 spaces, with the second line of each beginning at the left margin.
- (8) Number each page, except page 1, centered at the bottom of the page one double space below line 25 as follows: -2-
- (9) Bills should be neat but since they will be retyped on Council equipment corrections are allowed.
- (10) Material to be stricken from present law is typed and then dashed out, using the hyphen. Material to be added to present law is underscored.
- (11) When proofreading, make certain that numbers of all sections amended or repealed in the body of the bill appear in the title: If a statute is being amended, proofread the bill against the current version in the Montana Codes being sure to check the pocket supplement. New bill should read exactly as the present code does (including all punctuation) with matter to be stricken, dashed out and new material underlined.

CLERICAL INSTRUCTIONS -- BILL SAMPLE

44th Legislature

LC 0000

(Centered in 60 space length) 1

BILL NO. _____

(Centered - 2nd numbered line) 2

INTRODUCED BY _____

(two double spaces) 3

(Title begins at left margin -- line 4)

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO APPROPRIATE MONEY
5 FOR CAPITAL PROJECTS FOR THE BIENNIUM ENDING JUNE 30, 1973;
6 PROVIDING FOR OTHER MATTERS RELATING TO THE APPROPRIATIONS."

(two double spaces) 7

(Enacting clause -- all in upper case)
(indent 5 spaces) ----- 9

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
9 -----> Section 1. Short title. This act may be cited as the
10 "Capital Construction Budget Act of 1973".

11-----> Section 2. Definitions. As used in this act:

12-----> (1) "Agency" means all state offices, departments,
13 divisions, boards, commissions, councils, committees, and
14 other entities or instrumentalities of state government.

15-----> (2) "Capital project" means acquisition of land or
16 improvements, planning, capital construction, renovation,
17 furnishings, and major repair projects authorized in this
18 act.

19-----> (3) "Approved budget amendment" means approval by the
20 state controller of a request submitted through the budget
21 division to:

22-----> (a) obtain financing for a new or expanded project
23 from funds which were not available for consideration by the
24 legislature, but which have become available; or

25-----> (b) transfer of excess funds appropriated to a capital

1 project within an agency to increase the appropriations of
2 another capital project with that agency.

3 Section 3. No new capital project may be established
4 and no existing capital project may be expanded beyond the
5 scope of the project as approved by the legislature in the
6 1973 biennial budget, unless the new capital project or the
7 capital project expansion is authorized by an approved
8 budget amendment.

9 Section 4. If a capital project is jointly financed by
10 an appropriation or appropriations from state sources as
11 well as by appropriations from other sources, the funds
12 provided by appropriation from state sources shall be
13 decreased by the amount that the funds received from other
14 sources exceeds the amount from other sources appropriated
15 by the legislature in the 1973 biennial budget; provided
16 that:

17 (1) the decrease does not jeopardize the receipt of the
18 funds to be received from other sources; and

19 (2) this section shall not apply to any excess funds
20 if they are to be expended for a new or expanded project
21 approved by the state controller upon request submitted to
22 him through the budget division.

23 Section 5. When an agency receives federal funds as a
24 reimbursement for the cost of administering a federal
25 program and this cost was financed by an appropriation from

LC 0000

1 state funds, the federal funds shall be deposited into the
2 state fund from which the disbursements were originally
3 made.

-End-

APPENDIX A
SAMPLE -- BILL WITH PREAMBLE

1 BILL NO. _____

2 INTRODUCED BY _____

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO REORGANIZE THE
5 EXECUTIVE DEPARTMENT OF MONTANA STATE GOVERNMENT, AMENDING
6 SECTIONS, R.C.M. 1947, AND REPEALING SECTIONS
7, R.C.M. 1947."

8

9 WHEREAS, the Montana constitution requires that all
10 executive and administrative offices and instrumentalities
11 of the executive department of state government shall be
12 allocated by law among and within not more than twenty
13 departments.....

14

15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

16 Section 1. Short title. This act may be cited as "The
17 Executive Reorganization Act of 1971".

18 Section 2. Purpose. The purpose of this act is to
19 create a structure of the executive department of state
20 government which is responsible to the needs of the people
21 of this state...

22 Section 3. Definitions. As used in this act:

23 (1) "Executive department" means...

24 (2) "Reorganization amendment" means...

25 Section 4. Department head. Each department head

1 shall supervise, direct, account for, organize, plan,
2 administer, and execute the functions vested in the
3 department by this act or other law.

-End-

APPENDIX B
SAMPLE -- BILL WITH ALL NEW MATERIAL

1 BILL NO.

2 INTRODUCED BY _____

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO AUTHORIZE AND DIRECT
5 THE MONTANA DEPARTMENT OF REVENUE IN COMPUTING THE RETAIL
6 SELLING PRICE OF LIQUOR TO DESIGNATE AND ESTABLISH A LESSER
7 RETAIL SELLING PRICE ON ALL LIQUOR MANUFACTURED, DISTILLED,
8 RECTIFIED, BOTTLED, OR PROCESSED IN MONTANA THAN IS
9 DESIGNATED AND ESTABLISHED FOR LIQUOR IMPORTED FROM WITHOUT
10 THE STATE; AND PROVIDING AN EFFECTIVE DATE."

11

12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 Section 1. Price of liquor made in Montana. In
14 computing the selling price of all liquor sold and delivered
15 by the Montana department of revenue, the department of
16 revenue is authorized and directed to designate and
17 establish the state markup on all liquor either
18 manufactured, distilled, rectified, bottled, or processed in
19 Montana at ten percent (10%) less than the amount of markup
20 of products of out-of-state manufacturers, distillers,
21 rectifiers, and processors.

-End-

APPENDIX C
SAMPLE -- BILL WITH AMENDATORY MATERIAL

1 BILL NO. _____

2 INTRODUCED BY _____

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING SECTION
5 11-1804, R.C.M. 1947, TO REQUIRE POLICE COMMISSIONS IN
6 CITIES AND TOWNS OF THE THIRD CLASS; REPEALING SECTION
7 11-1804.1, R.C.M. 1947."

8

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 Section 1. Section 11-1804, R.C.M. 1947, is amended to
11 read as follows:

12 "11-1804. Police commission required in first, and
13 second, class-cities--other-cities-and-towns-may-provide-for
14 commission-by-ordinance and third class cities and towns. In
15 all cities of-the-first--and--second--class and towns the
16 mayor, or in those cities operating under the
17 commission-manager plan, the manager thereof, shall
18 nominate, and with the consent of the city council or
19 commission appoint three residents of such city or town, who
20 shall have the qualifications required by law to hold a
21 municipal office therein, and who shall constitute a board
22 to be known by the name of "police commission" who shall
23 hold office for three years and that one such member must be
24 appointed annually, at the first regular meeting of the city
25 council or commission in May of each year. Provided, that

1 at the first meeting of the council or commission in the
2 month of May after the passage of this act, the mayor, or in
3 those cities operating under the commission-manager plan,
4 the manager thereof, subject to the approval of the council
5 or commission, shall appoint three members of such police
6 commission, one to serve for one year, one for two years and
7 one for three years from the date of their appointment and
8 confirmation.

9 The compensation of the members of such board shall be
10 fixed by the city council or commission not to exceed ten
11 dollars per day, nor more than fifty dollars per month for
12 any month for each member in cities of the first and second
13 class.

14 ~~The--council--or--commission--of--any--town--or--city,--other~~
15 ~~than--a--city--of--the--first--and--second--class,--may--provide--by~~
16 ~~ordinance--for--such--a--police--commission--in--any--such--city--or~~
17 ~~town.~~ This act shall apply to organized police departments
18 in every city and town of the state of Montana regardless of
19 the form of government under which said city or town may be
20 operating or may at any time adopt."

21 Section 2. Section 11-1804.1, R.C.M. 1947, is
22 repealed.

-End-

APPENDIX D
SAMPLE -- BILL WITH AMENDATORY AND NEW MATERIAL

1 BILL NO. _____

2 INTRODUCED BY _____

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THE PUBLIC
5 SERVICE COMMISSION AUTHORITY AND THE DUTY TO ENCOURAGE
6 ENERGY CONSERVATION THROUGH REVISIONS OF UTILITY RATE
7 CLASSIFICATIONS; DIRECTING THE COMMISSION TO REVISE SUCH
8 RATES; AMENDING SECTION 70-115, R.C.M. 1947."

9

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 Section 1. Section 70-115, R.C.M. 1947, is amended to
12 read as follows:

13 "70-115. Classification of service. (1) The commission
14 ~~may~~ shall prescribe classifications of the service of ~~all~~
15 public utilities, and such classifications ~~may~~ shall take
16 into account and reflect the quantity used, the time when
17 used, ~~and-any-other-reasonable-consideration~~ the effect of
18 differential pricing on the demand for the service, the
19 effect of differences in demand on the economy and the
20 environment of the state, procedures to mitigate the adverse
21 distribution effects of incentive pricing, and other
22 considerations relevant to the energy conserving interest of
23 this act."

24 Section 2. There is a new R.C.M. section that reads as
25 follows:

1 Study and order for rate structures. The commission
2 shall study the structure and classification of the rates
3 charged by public utilities engaged in the distribution of
4 energy, including electricity and natural gas. The
5 commission shall complete this study within one (1) year of
6 the passage and approval of this act. The study shall
7 consider and evaluate the effects of existing and
8 alternative rate structures and classifications upon the
9 demand for energy and level of consumption of energy in
10 Montana.

-End-

APPENDIX E

1

2

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1 qualified electors of Montana, there shall be printed on the
2 ballot the full title and section 1 of this act and the
3 following words:

 "/ ☐ For annual sessions.

4 ☐ Against annual sessions."

-End-

APPENDIX F
SAMPLE -- JOINT RESOLUTION
(Directing a Rule to be included in the
Montana Administrative Code)
General Terms

1 JOINT RESOLUTION NO. _____

2 INTRODUCED BY _____

3
4 A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF
5 REPRESENTATIVES OF THE STATE OF MONTANA DIRECTING THE
6 ADOPTION OF A NEW RULE IN THE MONTANA ADMINISTRATIVE CODE
7 GOVERNING THE RETAIL PRICES OF ALCOHOLIC BEVERAGES CHARGED
8 BY THE LIQUOR DIVISION, DEPARTMENT OF REVENUE.

9
10 WHEREAS, the state of Montana sells liquor under a
11 , monopoly for the purpose of raising revenue for the state
12 through the profits realized from the sales; and

13 WHEREAS, the Department of Revenue is authorized to
14 operate the liquor monopoly, to fix, under Section 4-114,
15 R.C.M. 1947, the prices at which various brands of liquor
16 may be sold, and to make all necessary rules, under Section
17 4-113, R.C.M. 1947, for the proper administration of the
18 monopoly; and

19 WHEREAS, the Department of Revenue adheres to the
20 policies of marking up different kinds of liquors at
21 differing percentages and of establishing minimum prices for
22 various kinds of liquors; and

23 WHEREAS, the markups and minimum price policies of the
24 Department of Revenue are not supported by any stated
25 justification and have not been published in the Montana

1 Administrative Code, although these policies are rules as
2 defined in Section 82-4202(2), R.C.M. 1947, and should be
3 published as such; and

4 WHEREAS, the legislature desires that liquor pricing
5 policies be published and be supported by a rationale based
6 upon fair and effective marketing techniques.

7

8 NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE
9 OF REPRESENTATIVES OF THE STATE OF MONTANA:

10 That, within sixty (60) days, the Department of Revenue
11 is directed to initiate proceedings to promulgate a rule or
12 series of rules setting forth the policies to be applied in
13 fixing the retail price of liquor at state liquor stores,
14 and reciting in the rule, or in supporting documents, the
15 rationale behind the rule.

-End-

APPENDIX G
SAMPLE -- JOINT RESOLUTION
(Directing a Rule to be included in the
Montana Administrative Code)
Specific Terms

1 JOINT RESOLUTION NO. _____

2 INTRODUCED BY _____

3
4 A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF
5 REPRESENTATIVES OF THE STATE OF MONTANA DIRECTING THE
6 PROMULGATION OF A RULE BY THE DEPARTMENT OF FISH AND GAME
7 PROVIDING FOR THE EXAMINATION OF APPLICANTS FOR GUIDES' OR
8 OUTFITTERS' LICENSES AT LOCATIONS OUTSIDE HELENA.

9
10 WHEREAS, the department of fish and game licenses
11 guides and outfitters by examining applicants for such
12 licenses at its Helena offices; and

13 WHEREAS, the department could examine such applicants
14 at its regional headquarters with little administrative
15 inconvenience, and by so doing would relieve the license
16 applicants of an unwarranted burden.

17
18 NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE
19 OF REPRESENTATIVES OF THE STATE OF MONTANA:

20 That, under authority of Section 26-913, R.C.M. 1947,
21 the fish and game commission is directed to immediately
22 initiate proceedings to adopt a rule setting out procedures
23 for the examination of applicants for outfitters' licenses
24 or professional guides' licenses at the various regional
25 headquarters of the department of fish and game, either

1 according to a schedule or at the request of an applicant,
2 and to publish the adopted rule in Title 12, Chapter 10,
3 subchapter 6 of the Montana Administrative Code.

-End-

APPENDIX H
SAMPLE -- JOINT RESOLUTION
(Amending a Rule of the Montana Administrative Code)

1 JOINT RESOLUTION NO.

2 INTRODUCED BY _____

3

4 A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF
5 REPRESENTATIVES OF THE STATE OF MONTANA DIRECTING AN
6 AMENDMENT TO RULE 42-2.6(2)-S60730 OF THE MONTANA
7 ADMINISTRATIVE CODE TO PERMIT A HUSBAND AND WIFE FILING
8 SEPARATE INCOME TAX RETURNS TO SPLIT THE INCOME FROM A JOINT
9 VENTURE OR PARTNERSHIP ACTIVELY MANAGED BY BOTH.

10

11 WHEREAS, income tax regulations promulgated by the
12 Montana Department of Revenue now provide that net income
13 from a business operated jointly by a husband and wife, such
14 as a farm or a ranch, is the income of only one spouse
15 unless the spouses file as a partnership on their federal
16 income tax return; and

17 WHEREAS, this rule is arbitrary in that it obliges
18 married taxpayers to forego either the federal tax
19 advantages of joint filing or the state tax advantages of
20 separate filing; and

21 WHEREAS, this rule is against public policy in that it
22 fails to recognize the equal contributions of both spouses
23 to the management of many farms, ranches, small businesses,
24 and firms.

25

1 NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE
2 OF REPRESENTATIVES OF THE STATE OF MONTANA:

3 That the Department of Revenue is directed to proceed
4 within thirty (30) days to amend Rule 42-2.6(2)-S60730 of
5 the Montana Administrative Code, to delete the requirement
6 that spouses splitting income from a joint venture must
7 organize a bona fide partnership and file federal income tax
8 returns as such, and to provide that spouses may allocate
9 the income from a jointly managed business according to
10 their respective contributions of time, labor, and capital
11 to the business.

-End-

APPENDIX I
SAMPLE -- SIMPLE RESOLUTION

1 HOUSE RESOLUTION NO. _____

2 INTRODUCED BY _____

3

4 A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF
5 MONTANA THAT ITS MEMBERS SHALL SALVAGE FOR RECYCLING USED
6 PAPER WHEREVER FEASIBLE.

7

8 WHEREAS, the Legislature and offices of state
9 government use large amounts of paper each year, and

10 WHEREAS, this Legislature, this state, and this nation
11 are concerned about the shortage of paper, and

12 WHEREAS, the efficient use of forest products is of
13 great concern to all our citizens, and

14 WHEREAS, this House of Representatives is desirous of a
15 concerted effort toward a continual program of salvaging
16 paper products for reuse, and

17 WHEREAS, a new industry in the state of Montana has
18 indicated its willingness to cooperate with an immediate
19 program of recycling.

20

21 NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF
22 REPRESENTATIVES OF THE STATE OF MONTANA:

23 That the members of this House of Representatives shall
24 immediately institute a used paper recycling program by
25 depositing used paper in the proper receptacles.

1 BE IT FURTHER RESOLVED, that the Clerk of the House
 2 shall contact the proper authorities and make all
 3 arrangements necessary to carry out this program.

-End-

Montana State Library



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MONTANA LEGISLATIVE COUNCIL
LIBRARY